

**Federal Communications Commission**  
**2006 Biennial Regulatory Review**  
**CG Docket No. 06-152**

**Consumer & Governmental Affairs**  
**Bureau**  
**Staff Report**  
**February 14, 2007**

## I. OVERVIEW

1. This report and analyses are part of the Commission's biennial regulatory review process, as required by section 11 of the Communications Act of 1934, as amended.<sup>1</sup> This Staff Report summarizes the findings of a review by the Consumer & Governmental Affairs Bureau (CGB or the Bureau) of the Federal Communications Commission's rules under CGB's purview. Accompanying this report is a rule part analysis that identifies and explains the purpose of each applicable rule or rule part, discusses the impact of economic competition on the rule, summarizes and addresses comments filed.

2. This report continues and builds upon the findings and recommendations made in the 2004 Biennial Regulatory Review.<sup>2</sup> The information herein represents staff findings and recommendations.

## II. SCOPE OF REVIEW

3. The Consumer & Governmental Affairs Bureau was formed as part of the overall reorganization of the Commission that was approved by Congress on March 28, 2002. The Bureau advises the Commission on consumer policy concerning the Commission's regulated entities, including common carrier, broadcast, wireless, satellite and cable companies.

4. In addition, the Bureau advises the Commission, through the Disability Rights Office, on issues relevant to persons with disabilities. The Bureau engages in rulemakings, and reviews rulemakings and orders originating in other Bureaus and Offices, to develop recommendations and propose policies to ensure that telecommunications services and technologies are accessible to persons with disabilities, in conformance with existing disability laws and policies, and consistent with the Commission's goal of increasing accessibility of telecommunications services and technologies for persons with disabilities.

5. The Bureau also provides informal mediation and resolution of individual informal consumer inquiries and complaints consistent with controlling laws and Commission regulations, and in accordance with the Bureau's delegated authority. Additional functions of the Bureau include the development and implementation of consumer outreach and education initiatives and the performance of intergovernmental affairs on behalf of the Commission.

6. As part of the review process, the Consumer & Governmental Affairs Bureau has reviewed all of the rules within each of the following parts that apply to

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<sup>1</sup> 47 U.S.C. § 161.

<sup>2</sup> See *2004 Biennial Regulatory Review*, Consumer & Governmental Affairs Staff Report, CG Docket No. 04-175, released January 5, 2005.

“the operations or activities of any provider of telecommunications service:”<sup>3</sup>

Part 1 – Practice and Procedure – Sections 1.716 through 1.719 set forth rules for the filing of informal complaints.

Part 6 – Access to Telecommunications Service, Telecommunications Equipment and Customer Premises Equipment by Persons with Disabilities – Outlines the obligations of manufacturers and providers of telecommunications services to ensure that their equipment and services are accessible to persons with disabilities.

Part 7 – Access to Voicemail and Interactive Menu Services and Equipment by People with Disabilities – Outlines the obligations of providers of voicemail and interactive menu services and manufacturers of telecommunications equipment which performs a voicemail or interactive menu function to ensure that these services and functions are accessible to persons with disabilities.

Part 64 – Miscellaneous Rules Relating to Common Carriers – Addresses a broad range of common carrier issues. Specifically: Subpart B (Indecent Telephone Message Services); Subpart F (Telecommunications Relay Services); Subpart G (Telephone Operator Services - sections 64.703-705, 64.707-710); Subpart K (Changing Long Distance Service); Subpart L (Restrictions on Telephone Solicitation); Subpart O (Interstate Pay-Per-Call and Other Information Services); Subpart P (Calling Party Telephone Number; Privacy); Subpart Y (Truth-in-Billing Requirements for Common Carriers); Subpart BB (Restrictions on Unwanted Mobile Service Commercial Messages); Subpart CC (Customer Account Record Exchange Requirements).

Part 68 – Connection of Terminal Equipment to the Telephone Network – Establishes conditions for direct connection to the network of registered terminal equipment to prevent network harm and ensure that telephones are compatible with hearing aids. (CGB is only responsible for the rules in this part relating to hearing aid compatibility and, in addition, section 68.318(c) (Line seizure by automatic telephone dialing systems) and section 68.318(d) (Telephone facsimile machines; Identification of the sender of the message)).

### III. RECENT AND ONGOING ACTIVITIES

7. Telecommunications Relay Services. The Commission has taken several actions in its continuing efforts to ensure that telecommunications services are accessible to persons with disabilities. On January 26, 2005, the Commission denied a Petition for Declaratory Ruling filed by Petitioner Hands On Video Relay Services, Inc. (Petitioner or Hands On) on December 29, 2004.<sup>4</sup> Petitioner requested a declaratory

<sup>3</sup> See *The Commission Seeks Public Comment in the 2006 Biennial Review of Telecommunications Regulations*, Public Notice, 21 FCC Rcd 9422 (2006).

<sup>4</sup> *In the Matter of Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, (Declaratory Ruling), CC Docket 98-67 and CG Docket 03-123, DA 05-140, 20 FCC Rcd 1466, released January 26, 2005.

ruling that its “Brown Bag Rewards Program,” offered in connection with its provision of Video Relay Service (VRS), a form of telecommunications relay service (TRS) does not violate any section of the Communications Act or any Commission rule. The Commission concluded that the Brown Bag Rewards Program, and any program that offers any kind of financial incentive or reward for a consumer to place a TRS call, violates Section 225 of the Communications Act. Similarly, in an *Order* released on July 28, 2005,<sup>5</sup> the Commission found that the offering of free or discount long distance service to TRS consumers as an incentive for a consumer to use a particular TRS provider’s relay service, or as an incentive for a consumer to make more or longer TRS calls, violates Section 225.

8. On June 28, 2005 and June 29, 2006, the Commission released Orders adopting TRS compensation rates for the immediately following Fund years.<sup>6</sup> The Commission adopted separate compensation rates for interstate traditional TRS and Speech-to-Speech Services (STS), and interstate and intrastate Internet Protocol (IP) Relay and VRS. With respect to VRS, the 2006 *Order* freezes the 2005-2006 VRS rate of \$6.644 per minute for a one-year period ending June 30, 2007, or until such time as the Commission adopts a new VRS rate pursuant to new VRS cost recovery rules, whichever is sooner.

9. In a July 14, 2005 *Report and Order*,<sup>7</sup> the Commission concluded that because speed of answer is central to the provision of “functionally equivalent” TRS, and VRS is now a widely used – if not the preferred – form of TRS, VRS providers must provide service in compliance with the speed of answer rule adopted herein to be eligible for compensation from the Interstate TRS Fund. The *Report and Order* also concluded that VRS must be offered 24/7 and that VRS providers may be compensated for providing VRS mail.

10. On July 19, 2005, the Commission released an *Order on Reconsideration*<sup>8</sup> that reversed the Commission’s previous conclusion that translation from American Sign Language (ASL) into Spanish was not a TRS eligible for compensation from the Interstate TRS Fund. In another *Order*,<sup>9</sup> released the same day, the Commission granted a request for clarification that *two-line* captioned telephone service is a type of TRS eligible for compensation from the Interstate TRS Fund.

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<sup>5</sup> *In the Matter of Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, (Order), DA 05-2066, released July 28, 2005.

<sup>6</sup> *In the Matter of Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CC Docket No. 98-67 and CG Docket No. 03-123, Order, FCC 05-135 (rel. June 28, 2005); CG Docket No. 03-123, Order, DA 06-1345 (rel. June 29, 2006)..

<sup>7</sup> *In the Matter of Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, (Report and Order), FCC 05-140, released July 19, 2005.

<sup>8</sup> *In the Matter of Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, (Order on Reconsideration), FCC 05-139, released July 19, 2005.

<sup>9</sup> *In the Matter of Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, (Order), FCC 05-141, released July 19, 2005.

11. On May 9, 2006, the Commission released a Declaratory Ruling<sup>10</sup> concluding that the practice of restricting the use of VRS service or equipment to a particular provider is inconsistent with the TRS regime as intended by Congress, and raises serious public safety concerns.<sup>11</sup> In the corresponding *FNPRM*, the Commission sought comment on related issues such as whether it should adopt specific Internet protocols or standards to ensure that all VRS providers can receive calls from, and make calls to, any VRS consumer, and all VRS consumers can make calls through any VRS provider.

12. On July 12, 2006,<sup>12</sup> the Commission released an Order on Reconsideration of the *2004 TRS Report & Order* that addressed outstanding TRS and VRS issues, such as the compensability from the Interstate TRS Fund of research and development expenses incurred for TRS enhancements that go beyond the applicable TRS mandatory minimum standards, and the applicability of “rate of return” regulation to traditional TRS.

13. Slamming – On June 9, 2005, the Bureau released an Order concluding that an executing carrier’s rejection of carrier change submissions by a submitting carrier, based on the executing carrier’s own conclusion that the customer contacted by the submitting carrier was not authorized to make a long distance carrier change, violates section 64.1120(a)(2) of the Commission’s rules.<sup>13</sup>

14. CAN-SPAM – On February 7, 2005, the Commission announced the availability to the public of a list of wireless domain names that are used to transmit electronic messages to subscribers of commercial mobile service, such as cellular service, Personal Communications Service (PCS) and enhanced Specialized Mobile Radio Services (SMRS). This list was published in accordance with the Commission’s Order implementing the Controlling the Assault of Non-Solicited Pornography and Marketing Act of 2003, or the CAN-SPAM Act (*CAN-SPAM Order*).<sup>14</sup> The *CAN-*

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<sup>10</sup> *In the Matter of Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, (Declaratory Ruling and Further Notice of Proposed Rulemaking (FNPRM)), CG Docket No. 03-123, FCC 06-57, released May 9, 2006.

<sup>11</sup> As discussed below, the practice of call blocking proscribed herein includes providing degraded service quality for connections to the service of other VRS providers. See para 29, *infra*

<sup>12</sup> *In the Matter of Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, (Order on Reconsideration), CG Docket No. 03-123, FCC 06-87, adopted June 20, 2006, released July 12, 2006.

<sup>13</sup> The Order responded to a Petition for Declaratory Ruling filed on February 1, 2005 by a coalition of rural local exchange carriers. *Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996, Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers, LEC Coalition Request for Declaratory Ruling Regarding Carrier Change Verification*, CC Docket No. 94-129, Declaratory Ruling, 20 FCC Rcd 10599 (2005).

<sup>14</sup> *Rules and Regulations Implementing the Controlling the Assault of Non-Solicited Pornography and Marketing Act of 2003; Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, Order, CG Docket Nos. 04-53 and 02-278, 19 FCC Rcd 15927 (2004) (*CAN-SPAM Order*). The list includes the domain names used by wireless providers for commercial mobile service as such term is

*SPAM Order* adopted rules to protect wireless subscribers from unwanted commercial electronic mail messages.

15. Restrictions on Telephone Solicitation – On February 18, 2005, the Commission released a *Second Order on Reconsideration*,<sup>15</sup> addressing certain issues raised in petitions for reconsideration of the 2003 *Report and Order (2003 TCPA Order)*<sup>16</sup> implementing the Telephone Consumer Protection Act of 1991 (TCPA).<sup>17</sup> In so doing, the Commission addressed issues raised on reconsideration regarding the national do-not-call registry and the Commission's other telemarketing rules. Among the actions taken, the Commission declined to reconsider the rules establishing the national do-not-call registry, it clarified application of the "established business relationship" (EBR) exemption as well as the rules on maintaining company-specific do-not-call lists.

16. On June 15, 2005, the Bureau released a *Declaratory Ruling*<sup>18</sup> clarifying that the Commission's rules that prohibit the initiation of telephone solicitations to residential telephone subscribers registered on the national do-not-call list do not extend to calls made for the limited purpose of informing consumers of recalls due to a product safety or defect concern and scheduling appointments to correct such problems at no cost to the consumer. The Commission noted that this clarification will ensure that consumers continue to receive important product safety information without unduly infringing upon the consumer privacy protections afforded by the national do-not-call list.

17. On August 17, 2005, the Bureau released a *Declaratory Ruling*<sup>19</sup> clarifying that a company's "exclusive agents" may rely on the EBR exemption of the TCPA to make telephone solicitations on behalf of State Farm to consumers on the national do-not-call list. The Bureau reiterated, however, that once a consumer makes a company specific do-not-call request, the company and all of its agents must honor that request and not call the consumer again to make a telephone solicitation.

18. Facsimile Advertising – On April 6, 2005, the Commission adopted a

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defined in section 332(d) of the Communications Act of 1934 (47 U.S.C. 332(d)). See 47 C.F.R. § 64.3100(c) and *CAN-SPAM Order*, 19 FCC Rcd at 15938, para. 29.

<sup>15</sup> See *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, CG Docket No. 02-278, Second Order on Reconsideration, 20 FCC Rcd 3788 (2005).

<sup>16</sup> See *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, CG Docket No. 02-278, Report and Order, 18 FCC Rcd 14014 (2003) (*2003 TCPA Order*).

<sup>17</sup> Telephone Consumer Protection Act of 1991, Pub. L. No. 102-243, 105 Stat. 2394 (1991), codified at 47 U.S.C. § 227. The TCPA amended Title II of the Communications Act of 1934, 47 U.S.C. §§ 201 *et seq.*

<sup>18</sup> *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991, National Automobile Dealers Association Petition for Declaratory Ruling*, CG Docket No. 02-278, Declaratory Ruling, 20 FCC Rcd 10736 (2005).

<sup>19</sup> *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991, Request of State Farm Mutual Automobile Insurance Company for Clarification and Declaratory Ruling*, CG Docket No. 02-278, Declaratory Ruling, 20 FCC Rcd 13664 (2005).

*Report and Order and Third Order on Reconsideration*<sup>20</sup> to amend the Commission's rules on unsolicited facsimile advertisements as required by the Junk Fax Prevention Act of 2005.<sup>21</sup> Specifically, the Commission adopted rules such as codifying an EBR exemption to the prohibition on sending unsolicited facsimile advertisements, and requiring the sender of a facsimile advertisement to provide specified notice and contact information on the facsimile that allows recipients to "opt-out" of any future facsimile transmissions from the sender.

19. Truth-in Billing – On March 18, 2005, the Commission released a *Second Report and Order, Declaratory Ruling, and Second Further Notice of Proposed Rulemaking*<sup>22</sup> addressing a Petition for Declaratory Ruling filed by the National Association of State Utility Consumer Advocates (NASUCA) seeking to prohibit telecommunications carriers from imposing any separate line item or surcharge on a customers' bill that was not mandated or authorized by federal, state or local law.<sup>23</sup> In the *Order and Declaratory Ruling*, in light of the significant consumer concerns with the billing practices of wireless and other interstate providers raised in this proceeding the Commission took actions such as removing the existing exemption for Commercial Mobile Radio Service (CMRS) carriers from the truth-in-billing rules, and clarifying that state regulations requiring or prohibiting the use of line items for CMRS constitute rate regulation and are preempted under section 332(c)(3)(A) of the Act.<sup>24</sup> In addition, in the *Second Further Notice*, the Commission proposed and sought comment on other measures to enhance consumers' understanding of their bills and to facilitate their ability to make informed choices among competitive telecommunications service offerings.

20. Customer Account Record Exchange (CARE) – In a *Report and Order and*

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<sup>20</sup> *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991, Junk Fax Prevention Act of 2005*, CG Docket No. 02-278 and 05-338, Report and Order and Third Order on Reconsideration, 21 FCC Rcd 3787 (2005).

<sup>21</sup> See Junk Fax Prevention Act of 2005, Pub. L. No. 109-21, 119 Stat. 359 (2005) (Junk Fax Prevention Act). Section 2(h) of the Junk Fax Prevention Act requires the Commission to issue regulations to implement these amendments no later than April 5, 2006.

<sup>22</sup> See *Truth-in-Billing Format; National Association of State Utility Consumer Advocates' Petition for Declaratory Ruling Regarding Truth-in-Billing*, CC Docket No. 98-170, CG Docket No. 04-208, Second Report and Order, Declaratory Ruling, and Second Further Notice of Proposed Rulemaking, 20 FCC Rcd 6448 (2005) (*Second Truth-in-Billing Order and/or Second Further Notice*).

<sup>23</sup> Petition for Declaratory Ruling, filed by National Association of State Utility Consumer Advocates' (March 30, 2004) (NASUCA Petition).

<sup>24</sup> On July 31, 2006, the U.S. Court of Appeals for the Eleventh Circuit vacated the Commission's finding that section 332 preempts states from requiring or prohibiting line items on CMRS bills. Specifically, the court concluded that "[t]he scope of federal authority to regulate 'rates' or 'entry' does not include the presentation of line items on cellular wireless bills. This billing practice is a matter of 'other terms and conditions' that Congress intended to be regulated by the states." See *National Association of State Utility Consumer Advocates v. FCC*, 2006 WL 2105992 (11th Cir. 2006).

*Further Notice of Proposed Rulemaking*<sup>25</sup> released on February 25, 2005, the Commission adopted new rules to facilitate the exchange of customer account information between LECs and IXC's and to establish carriers' responsibilities with respect to such exchanges. The Commission stated that the rules adopted will help ensure that consumers' phone service bills are accurate and that their carrier selection requests are honored and executed without undue delay. In the *Further Notice of Proposed Rulemaking*, the Commission sought comment on issues relating to the exchange of customer account information between local exchange carriers.

21. In conjunction with other Bureaus and Offices, CGB also continues to develop consumer alerts, consumer fact sheets, education campaigns and media outreach campaigns to give consumers information about telecommunications products and services, their rights, and information so that they can make informed choices and protect themselves against unscrupulous practices.

#### **IV. SUMMARY OF BIENNIAL REGULATORY REVIEW**

22. This staff report represents a comprehensive review of the regulations that CGB oversees or implements that are subject to the section 11 biennial regulatory review requirements. We do not recommend initiating any proceedings at this time to modify or repeal any of these regulations as the result of economic competition between providers of telecommunications services, and we believe that the regulations remain necessary in the public interest.

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<sup>25</sup> See *Rules and Regulations Implementing Minimum Customer Account Record Exchange Obligations on All Local and Interexchange Carriers*, CG Docket No. 02-386, Report and Order and Further Notice of Proposed Rulemaking, 20 FCC Rcd 4560 (2005).

## APPENDIX I: RULE PART ANALYSIS

### Part 1, Subpart E – Complaints, Applications, Tariffs, and Reports Involving Common Carriers, Informal Complaints, Sections 1.716-1.719.

#### Description

Part 1, Subpart E implements section 208 of the Communications Act of 1934, as amended.<sup>26</sup> Section 208 permits any person to lodge a complaint with the Commission against a common carrier alleging a violation of the Communications Act. Subpart E establishes the rules for the submission and treatment of two categories of complaints against common carriers. These are “Formal Complaints,” which are governed by sections 1.720 – 1.736, and “Informal Complaints,” which are governed by sections 1.716-1.719.<sup>27</sup> The Informal Complaint rules emphasize ease of filing by consumers, and voluntary cooperative efforts by consumers and affected companies to resolve their differences informally. The Consumer & Governmental Affairs Bureau’s analysis of Part 1, Subpart E will be limited to “Informal Complaints” governed by sections 1.716 - 1.719.

#### Purpose

Part 1, Subpart E, Informal Complaints, sections 1.716 -1.719, sets forth procedures for the receipt and review of informal complaints against common carriers. Such complaints include complaints against a common carrier submitted outside the formal section 208 common carrier complaint process. These rules are designed to facilitate the efficient and expeditious processing of complaints submitted pursuant to section 208 by consumers in order to promote maximum compliance with the requirements of the Communications Act, as amended, and the Commission’s rules and implementing orders.

#### Analysis

##### Status of Competition

Not relevant. Section 208 authorizes complaints against all common carriers involving any of their obligations. These essentially procedural rules facilitate consumer complaints against common carriers and have not been impacted by competition.

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<sup>26</sup> 47 U.S.C. § 208.

<sup>27</sup> Section 1.719 of the Commission’s rules governs the treatment of informal complaints filed pursuant to section 258 of the Telecommunications Act of 1996 (47 U.S.C. § 258). Section 258 prohibits “slamming,” the submission or execution of an unauthorized change in a subscriber’s selection of a provider of telecommunications service.

**Recent Efforts**

No recent efforts.

**Comments**

No comments received.<sup>28</sup>

**Recommendation**

The staff does not recommend any changes to the informal complaint rules as part of the Biennial Review. The informal complaint rules facilitate the efficient and expeditious processing of complaints submitted pursuant to section 208 by consumers in order to promote maximum compliance with the requirements of the Communications Act, as amended, and the Commission's rules and implementing orders. Moreover, because these informal complaint procedural rules are not competition-related, we do not find that the rules are "no longer necessary in the public interest as the result of meaningful economic competition between providers of such [telecommunications] service." Staff therefore recommends that repeal or modification is not warranted. In addition, the staff concludes that the rules remain necessary in the public interest.

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<sup>28</sup> Comments were received from the American Association of People with Disabilities (AAPD) pertaining to the informal complaint process provisions of the Commission's closed captioning rules, found at Section 79.1. Closed captioning is not covered by this Biennial Review because closed captioning is a method of making video programming accessible to individuals who are deaf or hard of hearing. This Biennial Review pertains to rules applicable to providers of telecommunications services. We note that the Commission has an open rulemaking pertaining to its existing closed captioning rules, in which comment was sought on whether the complaint processes in the existing closed captioning rules should be revised. The Notice of Proposed Rulemaking in that proceeding was adopted on July 14, 2005, and the comment period expired on December 16, 2005 (CGB Docket 05-531, FCC 05-142).

## **Part 6 – Access to Telecommunications Service, Telecommunications Equipment and Customer Premises Equipment by Persons with Disabilities**

### **Description**

Part 6 implements sections 255 and 251(a)(2) of the Communications Act of 1934, as amended by the Telecommunications Act of 1996.<sup>29</sup> Sections 255 and 251(a)(2) require manufacturers of telecommunications equipment and providers of telecommunications services to ensure that such equipment and services are accessible to persons with disabilities, if readily achievable. The rules also establish complaint procedures to provide aggrieved parties an unqualified option to pursue an accessibility claim against a manufacturer or service provider informally or through more formal adjudicatory procedures.

### **Purpose**

The purpose of the rules is to bring the benefits of advances in telecommunications to all Americans, including those who face accessibility barriers to telecommunications products and services.

### **Analysis**

#### **Status of Competition**

Not relevant. As noted above, Part 6 implements sections 255 and 251(a)(2) of the Communications Act of 1934, as amended by the Telecommunications Act of 1996.<sup>30</sup> These provisions are intended to bring the benefits of advances in telecommunications to all Americans, including those who face accessibility barriers to telecommunications products and services by requiring manufacturers of telecommunications equipment and providers of telecommunications services to ensure that such equipment and services are accessible to persons with disabilities, if readily achievable. Accordingly, the realization of these benefits is not determined by economic competition.

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<sup>29</sup> 47 U.S.C. §§ 255, 251(a)(2). *See Implementation of Section 255 and 251(a)(2) of the Communications Act of 1934, as enacted by the Telecommunications Act of 1996; Access to Telecommunications Service, Telecommunications Equipment and Customer Premises Equipment by Persons with Disabilities*, WT Docket No. 96-198, FCC 99-181, Report and Order and Further Notice of Inquiry, 16 FCC Rcd 6417 (rel. Sep. 29, 1999).

<sup>30</sup> 47 U.S.C. §§ 255, 251(a)(2). *See Implementation of Section 255 and 251(a)(2) of the Communications Act of 1934, as enacted by the Telecommunications Act of 1996; Access to Telecommunications Service, Telecommunications Equipment and Customer Premises Equipment by Persons with Disabilities*, WT Docket No. 96-198, FCC 99-181, Report and Order and Further Notice of Inquiry, 16 FCC Rcd 6417 (rel. Sep. 29, 1999).

## Recent Efforts

No recent efforts.

## Comments

Comments were received from the American Association of People with Disabilities (AAPD)<sup>31</sup> stating that rules covering complaints against manufacturers pursuant to section 255 were not being followed in practice. AAPD asserted that although section 255 complaints were allowed to be filed telephonically, in practice Commission telephone operators taking calls from the public were not routinely taking complaints telephonically. AAPD noted that the informal complaint procedures found in section 6.17 permit the filing of complaints by any reasonable means, such as letter, fax, and telephone (voice/TRS/TTY). AAPD asserts that this was intended to permit persons with disabilities who use alternative formats to be able to access the FCC's informal complaint process the same way that persons without disabilities can easily access the FCC.

## Recommendation

The staff does not recommend changes to Part 6 as part of the Biennial Review. The rules serve to bring the benefits of advances in telecommunications to all Americans, including those who face accessibility barriers to telecommunications products and services, to ensure their full participation in our society. CGB will investigate AAPD's allegation that complaints are not being taken telephonically, and will handle the matter administratively.

Moreover, because these rules are not competition-related, we do not find that the rules are "no longer necessary in the public interest as the result of meaningful economic competition between providers of such [telecommunications] service." Staff therefore recommends that repeal or modification is not warranted under section 11. In addition, we conclude that Part 6 remains necessary in the public interest.

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<sup>31</sup> Comments filed September 16, 2006.

## **Part 7 – Access to Voicemail and Interactive Menu Services and Equipment by People with Disabilities**

### **Description**

Part 7 implements sections 255 of the Communications Act of 1934, as amended by the Telecommunications Act of 1996.<sup>32</sup> Section 255 requires manufacturers of telecommunications equipment and providers of telecommunications services to ensure that such equipment and services are accessible to persons with disabilities, if readily achievable. Part 7 extends these accessibility requirements to the providers of voicemail and interactive menu services and to the manufacturers of the equipment that perform those functions. The rules also establish complaint procedures to provide aggrieved parties an unqualified option to pursue an accessibility claim against a manufacturer or service provider informally or through more formal adjudicatory procedures.

### **Purpose**

The purpose of the rules is to bring the benefits of advances in telecommunications to all Americans, including those who face accessibility barriers to telecommunications products and services. This will ensure their full participation in our society by extending these accessibility requirements of section 255 to the providers of voicemail and interactive menu services and to the manufacturers of the equipment that performs these functions.

### **Analysis**

#### **Status of competition**

Not relevant. As noted above, Part 7 implements section 255 of the Communications Act of 1934, as amended by the Telecommunications Act of 1996.<sup>33</sup> This provision is intended to bring the benefits of advances in telecommunications to all Americans, including those who face accessibility barriers to telecommunications products and services, by requiring manufacturers of telecommunications equipment and providers of telecommunications services to ensure that such equipment and services are accessible to persons with disabilities, if readily achievable. Part 7 extends these accessibility requirements

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<sup>32</sup> 47 U.S.C. § 255. *See Implementation of Section 255 and 251(a)(2) of the Communications Act of 1934, as Enacted by the Telecommunications Act of 1996; Access to Telecommunications Service, Telecommunications Equipment and Customer Premises Equipment by Persons with Disabilities*, WT Docket No. 96-198, FCC 99-181, Report and Order and Further Notice of Inquiry, 16 FCC Rcd 6417 (rel. Sep. 29, 1999).

<sup>33</sup> 47 U.S.C. §§ 225, 251(a)(2). *See Implementation of Section 255 and 251(a)(2) of the Communications Act of 1934, as enacted by the Telecommunications Act of 1996; Access to Telecommunications Service, Telecommunications Equipment and Customer Premises Equipment by Persons with Disabilities*, WT Docket No. 96-198, FCC 99-181, Report and Order and Further Notice of Inquiry, 16 FCC Rcd 6417 (rel. Sep. 29, 1999).

to the providers of voicemail and interactive menu services and to the manufacturers of the equipment that perform those functions. Accordingly, the realization of these benefits is not determined by economic competition.

### **Recent Efforts**

No recent efforts.

### **Comments**

Comments were received from the American Association of People with Disabilities (AAPD)<sup>34</sup> stating that rules covering complaints against manufacturers pursuant to section 255 were not being followed in practice. AAPD asserted that although section 255 complaints were allowed to be filed telephonically, in practice Commission telephone operators taking calls from the public were not routinely taking complaints telephonically. AAPD noted that the informal complaint procedures found in section 7.17 permit the filing of complaints by any reasonable means, such as letter, fax, and telephone (voice/TRS/TTY). AAPD asserts that this was intended to permit persons with disabilities who use alternative formats to be able to access the FCC's informal complaint process the same way that persons without disabilities can easily access the FCC.

### **Recommendation**

The staff does not recommend changes to Part 7 as part of the Biennial Review. The rules serve to bring the benefits of advances in telecommunications to all Americans, including those who face accessibility barriers to telecommunications products and services, to ensure their full participation in our society. CGB will investigate AAPD's allegation that complaints are not being taken telephonically, and will handle the matter administratively.

Moreover, because these rules are not competition-related, we do not find that the rules are "no longer necessary in the public interest as the result of meaningful economic competition between providers of such [telecommunications] service." Staff therefore recommends that repeal or modification is not warranted under section 11. We further conclude that Part 7 remains necessary in the public interest.

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<sup>34</sup> Comments filed September 16, 2006.

**PART 64, Subpart B – Restrictions on Indecent Telephone Message Services****Description**

Part 64, Subpart B implements the provisions of section 223(b) of the Communications Act of 1934, as amended, relating to defenses to prosecution for indecent commercial communications.<sup>35</sup> Section 223(b) prohibits the use of the telephone for the purpose of obscene commercial communications. It also prohibits use of the telephone for indecent commercial communications without the consent of the other party and prohibits use of the telephone for indecent commercial communications that are available to anyone under 18 years of age. Section 223(b) also provides for certain defenses to prosecution for making indecent commercial communications.

Under section 64.201 of the Commission's rules, a provider of indecent commercial telephone communications has a defense to prosecution if the provider has notified the common carrier that the provider is engaged in providing indecent commercial communications, and does one of the following: (1) requires credit card payment before transmitting the message; (2) requires an authorized access or identification code, which has been established by mail, before transmitting the message; or (3) scrambles the message so that the audio is unintelligible and incomprehensible without a descrambler. Subpart B also provides a defense to prosecution for message sponsor subscribers to mass announcement services if they ask the carrier to take certain precautions. In addition, Subpart B bars common carriers, to the extent technically feasible, from providing access to obscene or indecent communications from the telephone to anyone who has not previously requested access to such services in writing if the carrier provides billing and collection for the provider of the obscene or indecent communications.

**Purpose**

Part 64, Subpart B is intended to implement the statutory restrictions on the commercial provision by telephone of indecent communications consistent with the First Amendment. In particular, Subpart B is intended to protect minors and non-consenting adults from indecent communications.

**Analysis****Status of Competition**

Not relevant. As noted, Part 64, Subpart B is intended to protect minors and non-consenting adults from indecent communications by implementing restrictions on the commercial provision by telephone of indecent communications. Such protections are not determined by economic competition.

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<sup>35</sup> 47 U.S.C. § 223(b).

**Recent Efforts**

No recent efforts.

**Comments**

No comments received.

**Recommendation**

The staff does not recommend changes to Part 64, Subpart B as part of the Biennial Review. Part 64, Subpart B is intended to implement the statutory restrictions on the commercial provision by telephone of indecent communications consistent with the First Amendment. In particular, Subpart B is intended to protect minors and non-consenting adults from indecent communications. Moreover, because Part 64, Subpart B is not competition-related, we do not find these rules are “no longer necessary in the public interest as a result of meaningful economic competition between providers of [telecommunications] service. Staff therefore recommends that repeal or modification is not warranted under section 11. We further conclude that Part 64, Subpart B remains necessary in the public interest.

## **Part 64, Subpart F – Telecommunications Relay Services and Related Customer Premises Equipment for Persons with Disabilities**

### **Description**

Part 64, Subpart F implements section 225 of the Communications Act of 1934, as amended.<sup>36</sup> Section 225 codifies Title IV of the Americans with Disabilities Act of 1990 (ADA) which requires that the Commission ensure that telecommunications relay services (TRS) are available, “to the extent possible and in the most efficient manner,” to individuals with hearing or speech disabilities in the United States.<sup>37</sup> Section 225 defines TRS as telephone transmission services that make it possible for an individual with a hearing or speech disability to engage in communication by wire or radio with a hearing individual in a manner functionally equivalent to that available to persons who do not have such a disability. The rules provide minimal functional, operational, and technical standards for TRS programs. The rules give states a significant role in ensuring the availability of TRS by treating carriers as compliant with their statutory obligations if they operate in a state that has a relay program certified as compliant by the Commission. The rules also establish a cost recovery and carrier contribution mechanism (TRS Fund) for the provision of interstate TRS and require states to establish cost recovery mechanisms for the provision of intrastate TRS. The Consumer & Governmental Affairs Bureau’s analysis of part 64, Subpart F will be limited to an analysis of issues relating to TRS policy.

### **Purpose**

Part 64, Subpart F is intended to facilitate communication by persons with a hearing or speech disability by ensuring that interstate and intrastate TRS are available throughout the country, and by ensuring uniform minimum functional, operational, and technical standards for TRS programs. The TRS rules ensure that individuals with hearing or speech disabilities receive the same quality of service when they make TRS calls, regardless of where their calls originate or terminate.

### **Analysis**

#### **Status of Competition**

Although TRS is intended to be an accommodation required of entities offering telephone service for persons with disabilities, at present, there is competition in the interstate TRS market, particularly with the Internet-based TRS services (IP Relay and VRS). Consumers can select a provider of their choice by going to that provider’s Web page. The majority of intrastate TRS, however, is provided by state TRS programs certified as meeting the Commission’s mandatory minimum standards. Therefore, the individual states decide whether to have multiple

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<sup>36</sup> 47 U.S.C. § 225.

<sup>37</sup> Pub. Law No. 101-336, § 401, 104 Stat. 327, 366-69 (1990).

TRS providers at the intrastate level as part of their state program, or whether to limit competition for intrastate TRS to the request for proposal and vendor selection process.

**Recent Efforts**

No recent efforts.

**Comments**

No comments received.

**Recommendation**

The staff does not recommend changes to Part 64, Subpart F as part of the Biennial Review. The TRS rules serve to facilitate communication by persons with a hearing or speech disability by ensuring that interstate and intrastate TRS are available throughout the country, and by ensuring uniform minimum functional, operational, and technical standards for relay programs. The TRS rules also ensure that individuals with hearing or speech disabilities receive the same quality of service when they make relay calls, regardless of where their calls originate or terminate. We accordingly do not find that the TRS rules are “no longer necessary in the public interest as a result of meaningful economic competition between providers of [telecommunications] service.” The staff recommends that repeal or modification is not warranted.

## **Part 64, Subpart G – Furnishing of Enhanced Services and Customer Premises Equipment by Bell Operating Companies; Telephone Operator Services**

### **Description**

Part 64, Subpart G addresses: (1) the provision of enhanced services and customer premises equipment (CPE) by Bell Operating Companies (BOCs); and (2) the provision of operator services. To the extent that Part 64, Subpart G addresses the provision of operator services, the rules implement the provisions and standards of the Telephone Operator Consumer Services Improvement Act of 1990 (TOCSIA) as codified at section 226 of the Communications Act of 1934, as amended.<sup>38</sup> The purpose of TOCSIA is to protect consumers who make interstate operator assisted calls from payphones, hotels, and other public locations from unreasonably high rates and unfair and deceptive practices. There are two categories of requirements set forth in TOCSIA and the Commission's rules: 1) rules applicable to "Aggregators" which are defined as persons or entities that make telephones available to the public or to transient users of their facilities for interstate telephone calls using a provider of operator services; and 2) rules applicable to "Operator Service Providers" which are defined as common carriers that provide operator services, or any other persons determined by the Commission to be providing operator services. The rules require that operator service providers identify themselves at the beginning of each call and provide consumers with information concerning their rates upon request. The rules also prohibit call blocking and require that customers be able to obtain access to the operator services provider of their choice. The rules impose restrictions on charges related to the provision of operator services, minimum standards for routing and handling of emergency telephone calls, and rules governing the filing of informational tariffs and the provision of operator services for prison inmates. The Consumer & Governmental Affairs Bureau's analysis of Part 64, Subpart G is limited to that portion of Subpart G that implements TOCSIA.<sup>39</sup>

### **Purpose**

The purpose of Part 64, Subpart G is, in part, to protect consumers by ensuring that they have information about the rates charged by operator services providers, and that they can reach the operator services provider of their choice. The rules also promote public safety by prescribing minimum standards for operator service provider and call aggregator handling of emergency telephone calls.

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<sup>38</sup> 47 U.S.C. § 226.

<sup>39</sup> We note that while the Consumer & Governmental Affairs Bureau has primary responsibility for most of the TOCSIA rules, the Wireline Competition Bureau has primary responsibility for the remaining TOCSIA rules.

## **Analysis**

### **Status of Competition**

The operator services market continues to become increasingly competitive.

### **Recent Efforts**

No recent efforts.

### **Comments**

No comments received.

## **Recommendation**

The staff does not recommend changes to Part 64, Subpart G, to the extent it implements the provisions and standards of TOCSIA, as part of the Biennial Review. The purpose of Part 64, Subpart G is, in part, to protect consumers by ensuring that they have information about the rates charged by operator services providers, and that they can reach the operator services provider of their choice. The rules also promote public safety by prescribing minimum standards for operator service provider and call aggregator handling of emergency telephone calls. We accordingly do not find that Part 64, Subpart G is “no longer necessary in the public interest as the result of meaningful economic competition between providers of [telecommunications] service.” The staff recommends that to the extent that Part 64, Subpart G implements the provisions and standards of TOCSIA, repeal or modification is not warranted.

## **Part 64, Subpart K – Changing Long Distance Service**

### **Description**

Part 64, Subpart K implements section 258 of the Communications Act of 1934, as amended by the Telecommunications Act of 1996.<sup>40</sup> Section 258 expanded the Commission's existing authority to deter and punish "slamming," the submission or execution of an unauthorized change in a subscriber's selection of a provider of telecommunications service. The rules prescribe verification procedures for telecommunications carriers to use in confirming subscribers' decisions to change telecommunications carriers. A carrier that fails to comply with the Commission's verification procedures is liable to the subscriber's authorized carrier for all amounts paid by the subscriber after the violation. The rules absolve subscribers of liability for charges billed by unauthorized carriers in certain cases, impose liability on unauthorized carriers for all charges collected from subscribers, and establish procedures to govern preferred carrier freezes.

### **Purpose**

Part 64, Subpart K attempts to: eliminate the fraudulent practice of "slamming," or changing a subscriber's authorized telecommunications carrier without the subscriber's knowledge or explicit authorization; foster consumer choice; and facilitate competition in the telecommunications services market.

### **Analysis**

#### **Status of Competition**

Competition in local service markets continues. Competitive local service providers continue to use all modes of entry contemplated by the 1996 Act. Competition for business customers in metropolitan areas, in general, continues to develop more rapidly than competition for residential customers or customers in rural areas. In addition, consumers increasingly appear to be using cable, wireless, and VoIP services as substitutes for traditional wireline services. The long distance market has been open to competition for some time, and domestic and international long distance prices have fallen.

#### **Recent Efforts**

On June 9, 2005, the Bureau released an Order denying a Petition for Declaratory Ruling regarding the Commission's carrier change verification rules filed by a coalition of rural local exchange carriers on February 1, 2005.<sup>41</sup> Section

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<sup>40</sup> 47 U.S.C. § 258.

<sup>41</sup> *Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996, Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers*,

64.1120(a)(2) of the Commission's rules provides that "[a]n executing carrier shall not verify the submission of a change in the subscriber's selection of a telecommunications service received from a submitting carrier." Based on this rule, the Bureau concluded that an executing carrier's rejection of carrier change submissions by a submitting carrier, based on the executing carrier's own conclusion that the customer contacted by the submitting carrier was not authorized to make a long distance carrier change, violates section 64.1120(a)(2) of the Commission's rules.

### **Comments**

No comments received.

### **Recommendation**

The staff does not recommend changes to Part 64, Subpart K as part of the Biennial Review. Part 64, Subpart K attempts to: eliminate the fraudulent practice of "slamming," or changing a subscriber's authorized telecommunications carrier without the subscriber's knowledge or explicit authorization; foster consumer choice; and facilitate competition in the telecommunications services market. Consumer protection is important even in competitive markets. There are issues that the marketplace alone might not fully address. For instance, government should continue to ensure that consumers are not harmed. Increased competition may in fact exacerbate the slamming practice. Thus, anti-slamming regulations are an important consumer protection. We accordingly do not find that Part 64, Subpart K is "no longer necessary in the public interest as the result of meaningful competition between providers of [telecommunications] service." The staff recommends that repeal or modification is not warranted.

## **Part 64, Subpart L – Restrictions On Telephone Solicitation**

### **Description**

Part 64, Subpart L implements Section 227 of the Communications Act of 1934 as amended.<sup>42</sup> Section 227 codifies the Telephone Consumer Protection Act of 1991 (TCPA) which was enacted to address certain telemarketing practices thought to be an invasion of consumer privacy and risk to public safety. The TCPA imposes restrictions on the use of automatic telephone dialing systems (“autodialers”), artificial or prerecorded messages, and telephone facsimile machines, and requires the Commission to adopt rules to implement these protections. Pursuant to the Commission's rules implementing the TCPA, a person or entity engaged in telemarketing is required to maintain a record of a called party's request not to receive future solicitations for a period of five years. Telemarketers must develop and maintain written policies for maintaining their lists, and they are required to inform their employees of the list's existence and train them to use the list. The rules prohibit telemarketers from calling residential telephone subscribers before 8 a.m. or after 9 p.m. and require telemarketers to identify themselves to called parties.

In 2003, the Commission established, in conjunction with the FTC, a national do-not-call registry for consumers who wish to avoid telemarketing calls. The FTC has responsibility for administering the do-not-call registry, while the FCC and FTC are responsible for enforcement of the registry. Telemarketers are required to access the numbers in the registry and remove them from their call lists on a quarterly basis. As mandated by the TCPA, the Commission's rules establish general prohibitions against autodialed calls being made without prior express consent to certain locations, including emergency lines and health care facilities, the use of prerecorded or artificial voice message calls to residences, and the transmission of unsolicited advertisements by facsimile machines. The TCPA rules provide that facsimile and prerecorded voice transmissions, as well as telephone facsimile machines, must meet specific identification requirements. The TCPA rules also prohibit line seizures by prerecorded messages. Both the identification requirements and prohibition on line seizures are codified in Part 68 of the Commission's rules (see 47 C.F.R. §§ 68.318(c) and 68.318(d)).<sup>43</sup>

### **Purpose**

Part 64, Subpart L is intended to protect subscriber privacy and public safety without unnecessarily restricting legitimate telephone marketing and sales.

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<sup>42</sup> 47 U.S.C. § 227.

<sup>43</sup> See discussion of Part 68 herein for an analysis of these rules.

## Analysis

### Status of Competition

Not relevant. As noted above, Part 64, Subpart L implements the Telephone Consumer Protection Act of 1991 (TCPA). The TCPA is intended to protect subscriber privacy without unnecessarily restricting legitimate telephone marketing and sales. The realization of such protections is not determined by economic competition. The staff notes that since the adoption of the rules, telemarketing practices have changed significantly. New technologies have emerged that allow telemarketers to better target potential customers and make it more cost effective to market using telephones and facsimile machines.

### Recent Efforts

No recent efforts.

### Comments

No comments received.

### Recommendation

The staff does not recommend changes to Part 64, Subpart L as part of the Biennial Review. Part 64, Subpart L is intended to protect subscriber privacy and public safety without unnecessarily restricting legitimate telephone marketing and sales. Moreover, because these rules are not competition-related, we do not find these rules are “no longer necessary in the public interest as a result of meaningful economic competition between providers of [telecommunications] service. We accordingly conclude that repeal or modification is not warranted.

**Part 64, Subpart O – Interstate Pay-Per-Call and Other Information Services****Description**

Part 64, Subpart O implements section 228 of the Communications Act of 1934, as amended.<sup>44</sup> Subpart O concerns pay-per-call and certain other information services. Subpart O requires common carriers that assign telephone numbers to providers of interstate pay-per-call services to require that the provider comply with these rules as well as certain other laws and regulations. Subpart O restricts the provision of pay-per-call services over 800 and “toll free” numbers and bars the provision of interstate pay-per-call services on a collect basis. Subpart O provides for 900 service access code assignment to pay-per-call services. It requires local exchange carriers to offer subscribers the option of blocking access to 900 numbers from their telephones. Subpart O establishes conditions for common carrier provision of billing and collection for pay-per-call services and bars the disconnection or interruption of local exchange or long-distance service for the non-payment of charges for interstate pay-per-call and certain information services.

**Purpose**

Part 64, Subpart O is intended to both promote the legitimate development of pay-per-call services and protect consumers from the fraudulent or unscrupulous provision of pay-per-call services.

**Analysis****Status of Competition**

Not relevant. While competition might lead to development of some changes that might benefit consumers, these rules are intended to protect consumers from misleading, unclear, and even fraudulent conduct.

**Recent Efforts**

No recent efforts.

**Comments**

No comments received.

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<sup>44</sup> 47 U.S.C. § 228. Section 228 codifies the Telephone Disclosure and Dispute Resolution Act, Public Law 102-556, 106 Stat. 4181, approved Oct. 28, 1992.

## Recommendation

The staff does not recommend changes to Subpart O as part of the current Biennial Review. Part 64, Subpart O is intended both to promote the legitimate development of pay-per-call services and to protect consumers from the fraudulent or unscrupulous provision of pay-per-call services. The staff believes these regulatory objectives continue to be valid. Moreover, because these rules are not competition-related, we accordingly do not find that the rules are “no longer necessary in the public interest as a result of meaningful economic competition between providers of [telecommunications] service.” The staff recommends that repeal or modification is not warranted under section 11. Staff notes that there is an open proceeding addressing ways to prevent circumvention of our existing Subpart O rules.<sup>45</sup>

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<sup>45</sup> *Policies and Rules Governing Interstate Pay-Per-Call and Other Information Services Pursuant to the Telecommunications Act of 1996; Policies and Rules Governing Interstate Pay-Per-Call and Other Information Services, and Toll-free Number Usage; Truth-in-Billing and Billing Format*; CC Docket Nos. 96-146 and 98-170, CG Docket No. 04-244, Notice of Proposed Rulemaking, FCC 04-162 (rel. July 16, 2004).

**Part 64, Subpart P – Calling Party Telephone Number; Privacy****Description**

The requirements in Part 64, Subpart P are based on the Commission's authority under sections 1, 4, 201-205, and 218 of the Communications Act of 1934, as amended.<sup>46</sup> Subpart P covers Calling Party Number (CPN) services, including "Caller ID," which depend on capabilities that use out-of-band signaling techniques such as "Signaling System Seven (SS7)." Subpart P provides that common carriers using SS7 must, subject to certain exceptions, transmit the CPN associated with interstate calls to interconnecting carriers without additional charge. Originating carriers using SS7 must recognize \*67 as a caller's request for privacy when dialed as the first three digits of an interstate call. Carriers providing line blocking services are required to recognize \*82 as a caller's request that privacy not be provided and that the CPN be passed on an interstate call. Subpart P requires carriers to notify customers of their \*67 and \*82 capabilities and restricts the use of telephone subscriber information. In addition, the rules at 64.1601(e) require that telemarketers transmit caller identification (caller ID) information and, when available, by the telemarketer's carrier, the name of the telemarketer. In addition, telemarketers are prohibited from blocking the transmission of caller ID information. The Commission determined that caller ID allows consumers to screen out unwanted calls and to identify companies that they wish to ask not to call again.

**Purpose**

The purpose of Part 64, Subpart P is to protect subscriber privacy while fostering the development of new and innovative services.

**Analysis****Status of Competition**

Competition in local service markets continues. Competitive local service providers continue to use all modes of entry contemplated by the 1996 Act. Competition for business customers in metropolitan areas, in general, continues to develop more rapidly than competition for residential customers or customers in rural areas. In addition, consumers increasingly appear to be using cable, wireless, and VoIP services as substitutes for traditional wireline services. The long distance market has been open to competition for some time, and domestic and international long distance prices have fallen.

**Recent Efforts**

No recent efforts.

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<sup>46</sup> 47 U.S.C. §§ 151, 154, 201-205, 218.

**Comments**

No comments received.

**Recommendation**

The staff does not recommend any changes as part of the Biennial Review. The purpose of Part 64, Subpart P is to protect subscriber privacy while fostering the development of new and innovative services. The staff believes these regulatory objectives continue to be valid because with increasing competition, consumers are likely to continue to receive significant numbers of telemarketing calls. Therefore, we do not find these rules are “no longer necessary in the public interest as a result of meaningful economic competition between providers of [telecommunications] service.” We accordingly conclude that the rules remain necessary in the public interest and recommend that repeal or modification is not warranted.

**Part 64, Subpart Y – Truth-In-Billing Requirement for Common Carriers****Description**

The Commission adopted the rules in Subpart Y pursuant to its authority under sections 201(b) and 258 of the Communications Act of 1934, as amended.<sup>47</sup> Subpart Y contains binding truth-in-billing guidelines that apply to carriers selling telecommunications services. Subpart Y requires carriers to provide customers with necessary information about their services and charges. Specifically, Subpart Y requires carriers to separate charges on the bill by provider, to describe clearly the services involved, to display clearly the name of the service provider in association with its charges, to display a toll-free number (or, in certain cases, an email or website address) for consumer inquiries, to identify those charges for which failure to pay will not result in disconnection of the customer's basic local service, and to highlight new service providers.

**Purpose**

Part 64, Subpart Y is designed to make telephone bills easier for consumers to understand, so that customers can make informed choices among carriers and services. Subpart Y is also intended to make it easier for consumers to identify and report fraud, such as slamming (unauthorized change to consumer's telecommunications carrier) and cramming (placement of unauthorized, misleading, or deceptive charges on a consumer's telephone bill).

**Analysis****Status of Competition**

Not relevant. While competition might lead to development of some changes that might benefit consumers, these rules are intended to protect consumers from misleading, unclear, and even fraudulent conduct.

**Recent Efforts**

No recent efforts.

**Comments**

No comments received.

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<sup>47</sup> 47 U.S.C. §§ 201(b), 258.

**Recommendation**

The staff does not recommend any changes as part of the Biennial Review. The rules in Part 64, Subpart Y are intended to make telephone bills easier for consumers to understand, so that customers can make informed choices among carriers and services. The rules also are intended to make it easier for consumers to identify and report fraud, such as slamming (unauthorized change to consumer's telecommunications carrier) and cramming (placement of unauthorized, misleading, or deceptive charges on a consumer's telephone bill). The staff believes these regulatory objectives continue to be valid. Moreover, because these rules are unaffected by competition, we do not find these rules are "no longer necessary in the public interest as a result of meaningful economic competition" between telecommunications service providers. The staff recommends that repeal or modification is not warranted under section 11. Staff notes that there is an open proceeding associated with Subpart Y.

## Part 64, Subpart BB – Restrictions on Unwanted Mobile Service Commercial Messages

### Description

Part 64, Subpart BB implements the Controlling the Assault of Non-Solicited Pornography and Marketing Act of 2003, or the CAN-SPAM Act.<sup>48</sup> Subpart BB contains rules to protect wireless subscribers from unwanted commercial electronic mail messages. Specifically, the rules prohibit the transmission of commercial messages to any address referencing an Internet domain name associated with a wireless subscriber messaging service, unless the individual addressee has given the sender express prior authorization.<sup>49</sup> To assist the senders of such messages in identifying wireless subscribers, the rules require that Commercial Mobile Radio Service (CMRS) providers<sup>50</sup> file with the Commission the names of all electronic domain names used to offer electronic mail messages that are transmitted directly to a wireless device utilized by a subscriber of a commercial mobile service.<sup>51</sup>

The rules require the Commission to make available to the public the list of wireless domain names that are used to transmit electronic messages to subscribers of commercial mobile service. The list enables senders of commercial mail to determine which addresses, containing those domain names, are directed at mobile services. The rule prohibits sending any commercial messages to addresses that contain domain names that have been listed on the official list for at least 30 days or at any time prior to 30 days if the sender otherwise knows that the message is addressed to a wireless device.

### Purpose

Part 64, Subpart BB is intended to protect wireless subscriber privacy and public safety without unnecessarily restricting legitimate mobile marketing and sales. The establishment of a list of wireless domain names is an effective method to allow subscribers to avoid unwanted mobile service commercial messages.

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<sup>48</sup> Controlling the Assault of Non-Solicited Pornography and Marketing Act of 2003, Pub. L. No. 108-187, 117 Stat. 2699 (2003) (*CAN-SPAM Act*), codified at 15 U.S.C. § 7701-7713, 18 U.S.C. 1037 and 28 U.S.C. § 994. See also *Rules and Regulations Implementing the Controlling the Assault of Non-Solicited Pornography and Marketing Act of 2003* (CAN-SPAM Act), Order, 19 FCC Rcd 15927 (2004) (*CAN-SPAM Order*). The Federal Trade Commission (FTC) and the Department of Justice are charged with general enforcement of the CAN-SPAM Act, which applies to commercial electronic mail messages generally, not just to those sent to wireless devices.

<sup>49</sup> A domain name means any alphanumeric designation which is registered with or assigned by any domain name registrar, domain name registry, or other domain name registration authority as part of an electronic address on the Internet. An Internet domain reference, such as “fcc.gov,” is used in standard addressing of electronic mail. See 47 C.F.R. § 64.3100(c)(3).

<sup>50</sup> CMRS providers are those providers that offer the services defined in 47 C.F.R. Section 20.9. See 47 C.F.R. § 64.3100(c)(1).

<sup>51</sup> See 47 C.F.R. § 64.3100(c) and *CAN-SPAM Order*, 19 FCC Rcd at 15938, para. 29.

## **Analysis**

### **Status of Competition**

Not relevant. As noted above, Part 64, Subpart BB implements the CAN-SPAM Act. The CAN-SPAM Act is intended to address the growing number of unwanted commercial electronic mail messages, which Congress determined to be costly, inconvenient, and often fraudulent or deceptive. The realization of such protections is not determined by economic competition. The purpose of and need for these consumer protection rules are unaffected by competition.

### **Recent Efforts**

On February 7, 2005, the Commission announced the availability to the public of a list of wireless domain names that are used to transmit electronic messages to subscribers of commercial mobile service, such as cellular service, Personal Communications Service (PCS) and enhanced Specialized Mobile Radio Services (SMRS). The list of wireless domain names may be accessed from the Commission's website.

### **Comments**

No comments received.

### **Recommendation**

The staff does not recommend changes to Subpart BB as part of the current Biennial Review. Part 64, Subpart BB is intended to provide subscribers both with the ability to avoid receiving mobile service commercial messages sent without the subscribers' prior consent, and the ability to indicate electronically a desire not to receive future mobile service commercial messages. The staff believes these regulatory objectives continue to be valid. Moreover, because these rules are not affected by competition, we do not find that the rules are "no longer necessary in the public interest as a result of meaningful economic competition between providers of [telecommunications] service." The staff recommends that repeal or modification is not warranted under section 11.

## Part 64, Subpart CC – Customer Account Record Exchange Requirements

### Description

Part 64, Subpart CC contains rules to help ensure that consumers' phone service bills are accurate and that their carrier selection requests are honored and executed without undue delay. Subpart CC mandates minimum standards to facilitate the exchange of customer account information between local exchange carriers (LECs) and interexchange carriers (IXCs). The rules also require carriers to provide the required notifications promptly and without unreasonable delay.

While the rules specify what type of information must be shared, they do not specify the method carriers should use, allowing them to share customer account information pursuant to state-mandated data exchange requirements, privately negotiated agreements with other carriers, or voluntarily-established business rules, including the voluntary, industry-developed standards known as the Customer Account Record Exchange (CARE) process. The Commission adopted this approach to minimize the potential costs or burdens associated with implementing the information sharing requirements, particularly for small and rural carriers.

Accompanying the order was a *Further Notice of Proposed Rulemaking* (FNPRM)<sup>52</sup> seeking comment on whether the rules should be extended to communications between LECs when a consumer changes local service providers. The FNPRM specifically asked whether the Commission should require all local service providers to participate in the exchange of customer account information and if so, what information local service providers should be required to supply.

Most recently, on September 13, 2006, the Commission released an *Order on Reconsideration*<sup>53</sup> adopting minor clarifications and corrections to the Commission's customer account record exchange rules. The Commission concluded that these modifications were needed to clarify carriers' respective obligations under those rules.<sup>54</sup>

### Purpose

Part 64, Subpart CC is intended to provide carriers with the necessary information to execute customer requests in a timely and efficient manner and to properly bill customers.

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<sup>52</sup> See *Rules and Regulations Implementing Minimum Customer Account Record Exchange Obligations on All Local and Interexchange Carriers*, CG Docket No. 02-386, Report and Order and Further Notice of Proposed Rulemaking, 20 FCC Red 4560 (2005).

<sup>53</sup> See *Rules and Regulations Implementing Minimum Customer Account Record Exchange Obligations on All Local and Interexchange Carriers*, CG Docket No. 02-386, Order on Reconsideration, FCC 06-134 (rel. September 13, 2006).

<sup>54</sup> See *Rules and Regulations Implementing Minimum Customer Account Record Exchange Obligations on All Local and Interexchange Carriers*, CG Docket No. 02-386, Order on Reconsideration, FCC 06-134 (rel. September 13, 2006).

## Analysis

### Status of Competition

Competition in local service markets continues. With the increase in competition and churn in the local market, accompanied by the advent of local number portability, the failure of carriers to exchange information in a uniform or timely manner has resulted in an increase in customer migrations that are not seamless and contributed to the need for the CARE rules.

### Recent Efforts

No recent efforts.

### Comments

No comments received.

## Recommendation

The staff does not recommend changes to Part 64, Subpart CC as part of the Biennial Review. Part 64, Subpart CC attempts to facilitate the exchange of customer account information between LECs and IXC's and to establish carriers' responsibilities with respect to such exchanges. Consumer protection is important even in competitive markets. There are issues that the marketplace alone might not fully address. For instance, government should continue to ensure that consumers are not harmed. Increased competition may in fact exacerbate the slamming practice. Thus, anti-slamming regulations are an important consumer protection. These requirements also recognize a carrier's right to be compensated for the services it provides by ensuring that providers of long distance phone services receive proper notification when customers are placed on their networks. We accordingly do not find that Part 64, Subpart CC is "no longer necessary in the public interest as the result of meaningful competition between providers of [telecommunications] service." The staff recommends that repeal or modification is not warranted under section 11.

## Part 68 – Connection of Terminal Equipment to the Telephone Network

### Description

Part 68 was established in 1974 as the result of a court decision ruling that the Bell Operating Companies could not bar direct connection of customer premises equipment (CPE) to the public switched telephone network (PSTN), so long as the CPE would not cause harm to the PSTN.<sup>55</sup> Part 68 also implements the Hearing Aid Compatibility Act of 1988 (HAC Act).<sup>56</sup> The HAC Act requires that, unless exempt, all essential telephones and all telephones manufactured in or imported into the United States after August 16, 1989 must “provide internal means for effective use with hearing aids that are designed to be compatible with telephones which meet established technical standards for hearing aid compatibility.”<sup>57</sup> The statute also directs the Commission to assess periodically the appropriateness of continuing the exemptions. In addition, among its many provisions, Part 68 also includes certain requirements for terminal equipment which implement the Telephone Consumer Protection Act of 1991 (the TCPA).<sup>58</sup> Congress enacted the TCPA in an effort to address telephone marketing calls and certain telemarketing practices thought to be an invasion of consumer privacy and a risk to public safety. The TCPA imposes, among other things, certain restrictions on the use of automatic dialing machines and the use of telephone facsimile machines to send unsolicited advertisements. These include a requirement that addresses line seizure by automatic telephone dialing systems and a requirement that all fax transmissions include source labeling (47 C.F.R. §§ 68.318(c) and 68.318(d), respectively). The scope of this discussion is limited to Part 68 as it applies to telephone compatibility with hearing aids, line seizure by automatic telephone dialing systems, and the requirement that all fax transmissions include source labeling.<sup>59</sup>

### Purpose

The purpose of Part 68 is, in part, to provide for uniform standards for the compatibility of hearing aids and telephones to ensure that persons with hearing aids have reasonable access to the telephone network. The purpose of sections 68.318(c) and 68.318(d) is to implement the specific mandates of the TCPA which, as noted above, were intended to address telephone marketing calls and certain telemarketing practices thought to be an invasion of consumer privacy and a risk to public safety.

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<sup>55</sup> *Hush-A-Phone v. United States*, 238 F.2d 266 (D.C. Cir. 1956).

<sup>56</sup> 47 U.S.C. § 610.

<sup>57</sup> Public mobile service phones are currently exempt from the hearing aid compatibility requirements of the HAC Act. See 47 U.S.C. § 610(b)(2)(A)(i) and (ii). The Commission’s rules broadly define public mobile services as “radio services in which common carriers are authorized to offer and provide mobile and related fixed radio telecommunication services for hire to the public.” See 47 C.F.R. § 22.99.

<sup>58</sup> Pub. L. No. 102-243, 105 Stat. 2394 (1991), *codified at* 47 U.S.C. § 227.

<sup>59</sup> The Wireline Competition Bureau oversees Part 68 as it applies to the connection of CPE to the PSTN. A discussion of Part 68 as it applies to such matters is contained in the Wireline Competition Bureau’s Biennial Regulatory Review 2004 Staff Report.

## Analysis

### Status of Competition

Competition is not relevant to the Part 68 rules addressed in this section. The hearing aid capacity rules implement the HAC Act and are intended to ensure that persons with hearing aids have reasonable access to the telephone network by providing uniform standards for the compatibility of hearings aids and telephones. The TCPA-related rules are intended to address certain telemarketing practices that are thought to be an invasion of consumer privacy and a risk to public safety. Accordingly, the realization of these benefits is not determined by economic competition.

### Recent Efforts

In July of 2003, the Commission revised its rules under the Telephone Consumer Protection Act (TCPA) to address changes in the telemarketing marketplace. Among other things, the Commission amended the rule at section 68.318(d) to address certain activities by facsimile broadcasters. The rules require that if a facsimile broadcaster demonstrates a high degree of involvement in the sender's facsimile messages, such as supplying the numbers to which a message is sent, that broadcaster's name, under which it is registered to conduct business with the State Corporation Commission (or comparable regulatory authority), must be identified on the facsimile along with the sender's name.

### Comments

Comments were received from the American Association of People with Disabilities (AAPD)<sup>60</sup> stating that rules covering complaints for HAC were not consumer friendly. AAPD asserts that the requirement that consumers identify the manufacturer (against whom they seek to file a complaint) by contacting the Administrative Council for Terminal Attachment (ACTA) is a barrier to consumers filing complaints. AAPD suggests that the HAC process should be more similar to the process for determining the designated agent for filing 255 complaints.<sup>61</sup> AAPD seeks to have the same procedures followed by manufacturers subject to the FCC's HAC rules and complaint procedures and to have the FCC publish HAC designated agents' contact information on the FCC (DRO) website.

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<sup>60</sup> Comments filed September 16, 2006.

<sup>61</sup> Manufacturers subject to 255 are required to file with the FCC the name and contact information of their designated agent for receiving complaints. A consumer wishing to file a 255 complaint can locate the name and designated agent's contact information from the FCC website.

## Recommendation

The staff does not recommend changes to the Part 68 rules it administers as part of the Biennial Review. The purpose of Part 68 is, in part, to provide for uniform standards for the compatibility of hearing aids and telephones to ensure that persons with hearing aids have reasonable access to the telephone network which the rules continue to do. Moreover, because Part 68 as it applies to hearing aid compatibility is not competition-related, we do not find that Part 68 is “no longer necessary in the public interest as a result of meaningful economic competition between providers of [telecommunications] service.” Staff therefore recommends that repeal or modification is not warranted under section 11. Regarding AAPD’s comments about having to locate designated agent information for HAC complaint defendants through a third party,<sup>62</sup> the Commission will consider whether to remedy this potential barrier to filing complaints.

The staff does not recommend changes to Part 68, sections 68.318(c) and 68.318(d) as part of the Biennial Review. Sections 68.318(c) and 68.318(d) implement the specific mandates of the TCPA which, as noted above, were intended to address telephone marketing calls and certain telemarketing practices thought to be an invasion of consumer privacy and a risk to public safety. Moreover, because these rules are not competition-related, we cannot find these rules are “no longer necessary in the public interest as a result of meaningful economic competition between providers of [telecommunications] service.” Staff therefore recommends that repeal or modification is not warranted under section 11.

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<sup>62</sup> Comments filed September 16, 2006.